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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
8

9 Mary Joann Jones,

No. CV-19-02854-PHX-ESW

10 Plaintiff,

ORDER

11 v.

12 Commissioner of the Social Security
13 Administration,

14 Defendant.
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16

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18 Pending before the Court is Mary Joann Jones' ("Plaintiff") appeal of the Social
19 Security Administration's ("Social Security") denial of her application for disability
20 insurance benefits. The Court has jurisdiction to decide Plaintiff's appeal pursuant to 42
21 U.S.C. § 405(g). Under 42 U.S.C. § 405(g), the Court has the power to enter, based upon
22 the pleadings and transcript of the record, a judgment affirming, modifying, or reversing
23 the decision of the Commissioner of Social Security, with or without remanding the case
24 for a rehearing. Both parties have consented to the exercise of U.S. Magistrate Judge
25 jurisdiction. (Doc. 10).

26 After reviewing the Administrative Record ("A.R.") and the parties' briefing
27 (Docs. 15, 18, 22), the Court finds that the Administrative Law Judge's ("ALJ") decision
28 contains harmful legal error. For the reasons explained in Section II below, the decision

1 is reversed and the case is remanded to the Commissioner of Social Security for an
 2 immediate award of benefits.

3 **I. LEGAL STANDARDS**

4 **A. Disability Analysis: Five-Step Evaluation**

5 The Social Security Act (the “Act”) provides for disability insurance benefits to
 6 those who have contributed to the Social Security program and who suffer from a
 7 physical or mental disability. 42 U.S.C. § 423(a)(1). To be eligible for benefits based
 8 on an alleged disability, the claimant must show that he or she suffers from a medically
 9 determinable physical or mental impairment that prohibits him or her from engaging in
 10 any substantial gainful activity. 42 U.S.C. § 423(d)(1)(A). The claimant must also show
 11 that the impairment is expected to cause death or last for a continuous period of at least
 12 12 months. *Id.*

13 To decide if a claimant is entitled to Social Security benefits, an ALJ conducts an
 14 analysis consisting of five questions, which are considered in sequential steps. 20 C.F.R.
 15 § 404.1520(a). The claimant has the burden of proof regarding the first four steps:¹

16 **Step One:** Is the claimant engaged in “substantial gainful
 17 activity”? If so, the analysis ends and disability benefits are
 18 denied. Otherwise, the ALJ proceeds to Step Two.

19 **Step Two:** Does the claimant have a medically severe
 20 impairment or combination of impairments? A severe
 21 impairment is one which significantly limits the claimant’s
 22 physical or mental ability to do basic work activities. 20
 23 C.F.R. § 404.1520(c). If the claimant does not have a severe
 24 impairment or combination of impairments, disability benefits
 25 are denied at this step. Otherwise, the ALJ proceeds to Step
 26 Three.

27 **Step Three:** Is the impairment equivalent to one of a number
 28 of listed impairments that the Commissioner acknowledges
 are so severe as to preclude substantial gainful activity? 20

¹ *Parra v. Astrue*, 481 F.3d 742,746 (9th Cir. 2007).

1 C.F.R. § 404.1520(d). If the impairment meets or equals one
 2 of the listed impairments, the claimant is conclusively
 3 presumed to be disabled. If the impairment is not one that is
 4 presumed to be disabling, the ALJ proceeds to the fourth step
 of the analysis.

5 **Step Four:** Does the impairment prevent the claimant from
 6 performing work which the claimant performed in the past?
 7 If not, the claimant is “not disabled” and disability benefits
 8 are denied without continuing the analysis. 20 C.F.R. §
 404.1520(f). Otherwise, the ALJ proceeds to the last step.

9
 10 If the analysis proceeds to the final question, the burden of proof shifts to the
 Commissioner:²

11 **Step Five:** Can the claimant perform other work in the
 12 national economy in light of his or her age, education, and
 13 work experience? The claimant is entitled to disability
 14 benefits only if he or she is unable to perform other work. 20
 15 C.F.R. § 404.1520(g). Social Security is responsible for
 16 providing evidence that demonstrates that other work exists in
 17 significant numbers in the national economy that the claimant
 can do, given the claimant’s residual functional capacity, age,
 education, and work experience. *Id.*

18 **B. Standard of Review Applicable to ALJ’s Determination**

19 The Court must affirm an ALJ’s decision if it is supported by substantial evidence
 20 and is based on correct legal standards. *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir.
 21 2012); *Marcia v. Sullivan*, 900 F.2d 172, 174 (9th Cir. 1990). Although “substantial
 22 evidence” is less than a preponderance, it is more than a “mere scintilla.” *Richardson v.*
 23 *Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison v. NLRB*, 305 U.S. 197,
 24 229 (1938)). It means such relevant evidence as a reasonable mind might accept as
 25 adequate to support a conclusion. *Id.*

26 In determining whether substantial evidence supports the ALJ’s decision, the
 27 Court considers the record as a whole, weighing both the evidence that supports and

28 ² *Parra*, 481 F.3d at 746.

1 detracts from the ALJ's conclusions. *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir.
2 1998); *Tylitzki v. Shalala*, 999 F.2d 1411, 1413 (9th Cir. 1993). If there is sufficient
3 evidence to support the ALJ's determination, the Court cannot substitute its own
4 determination. *See Morgan v. Comm'r of the Social Sec. Admin.*, 169 F.3d 595, 599 (9th
5 Cir. 1999) ("Where the evidence is susceptible to more than one rational interpretation, it
6 is the ALJ's conclusion that must be upheld."); *Magallanes v. Bowen*, 881 F.2d 747, 750
7 (9th Cir. 1989). This is because the ALJ, not the Court, is responsible for resolving
8 conflicts and ambiguities in the evidence and determining credibility. *Magallanes*, 881
9 F.2d at 750; *see also Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

10 The Court also considers the harmless error doctrine when reviewing an ALJ's
11 decision. This doctrine provides that an ALJ's decision need not be remanded or
12 reversed if it is clear from the record that the error is "inconsequential to the ultimate
13 nondisability determination." *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008)
14 (citations omitted); *Molina*, 674 F.3d at 1115 (an error is harmless so long as there
15 remains substantial evidence supporting the ALJ's decision and the error "does not
16 negate the validity of the ALJ's ultimate conclusion") (citations omitted).

17 **II. DISCUSSION**

18 **A. Procedural Background**

19 Plaintiff, who was born in 1962, has worked as a business owner by running her
20 own bar. (A.R. 26, 68). In 2015, Plaintiff filed application for disability insurance
21 benefits. (A.R. 140-41). Plaintiff's applications alleged that on February 15, 2014,
22 Plaintiff became unable to work due to bipolar disorder, extreme depression, and anxiety.
23 (A.R. 68). Social Security denied the applications on April 27, 2015. (A.R. 84-87).
24 Upon Plaintiff's request for reconsideration, Social Security affirmed the denial of
25 benefits. (A.R. 93-95). Plaintiff sought further review by an ALJ, who conducted a
26 hearing in November 2017. (A.R. 34-53).

27 In his April 26, 2018 decision, the ALJ found that Plaintiff is not disabled within
28 the meaning of the Social Security Act. (A.R. 18-28). The Appeals Council denied

1 Plaintiff's request for review, making the ALJ's decision the final decision of the Social
2 Security Commissioner. (A.R. 1-6). On May 6, 2019, Plaintiff filed a Complaint (Doc.
3 1) requesting judicial review and reversal of the ALJ's decision.

4 **B. The ALJ's Application of the Five-Step Disability Analysis**

5 **1. Step One: Engagement in "Substantial Gainful Activity"**

6 The ALJ determined that Plaintiff has not engaged in substantial gainful activity
7 since February 15, 2014 (the alleged disability onset date) through December 31, 2017
8 (the date last insured). (A.R. 20). Neither party disputes this determination.

9 **2. Step Two: Presence of Medically Severe Impairment/Combination**
10 **of Impairments**

11 The ALJ found that Plaintiff has the following severe impairments: bipolar
12 disorder/depression and anxiety. (A.R. 20). The ALJ's step two determination is
13 undisputed.

14 **3. Step Three: Presence of Listed Impairment(s)**

15 The ALJ determined that Plaintiff does not have an impairment or combination of
16 impairments that meets or medically equals an impairment listed in 20 C.F.R. Part 404,
17 Subpart P, Appendix 1 of the Social Security regulations. (A.R. 21-22). Neither party
18 disputes the ALJ's determination at this step.

19 **4. Step Four: Capacity to Perform Past Relevant Work**

20 The ALJ found that Plaintiff has retained the residual functional capacity ("RFC")
21 to perform the full range of work at all exertional levels, subject to the following non-
22 exertional limitations: Plaintiff "can understand, remember, and carry out simple and
23 semi-skilled instructions, follow work-like procedures, and make simple work related
24 decisions." (A.R. 22).

25 After considering Plaintiff's RFC, the ALJ determined that Plaintiff is unable to
26 perform her past relevant work as a business owner. (A.R. 26). Although Plaintiff does
27 not challenge the ALJ's determination that Plaintiff is unable perform her past work,
28

1 Plaintiff asserts that the ALJ's decision does not adequately consider all work-related
2 limitations. (Doc. 15 at 20-22).

3 **5. Step Five: Capacity to Perform Other Work**

4 At the final step, the ALJ found that Plaintiff is able to perform other jobs existing
5 in significant numbers in the national economy. (A.R. 27). In making this finding, the
6 ALJ relied on the Medical-Vocational Guidelines (the "Grids"). Plaintiff argues that the
7 ALJ erred at Step Five by relying on the Grids. (Doc. 15 at 18-20).

8 **C. The ALJ Failed to Provide Clear and Convincing Reasons for Discounting** 9 **Plaintiff's Testimony Regarding Plaintiff's Alleged Impairments**

10 When evaluating a claimant's testimony regarding subjective pain or symptoms,
11 the ALJ must engage in a two-step analysis. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th
12 Cir. 2009). In the first step, the ALJ must determine whether the claimant has presented
13 objective medical evidence of an underlying impairment "which could reasonably be
14 expected to produce the pain or other symptoms alleged." *Lingenfelter v. Astrue*, 504
15 F.3d 1028, 1036 (9th Cir. 2007). The claimant does not have to show that the impairment
16 could reasonably be expected to cause the severity of the symptoms. Rather, a claimant
17 must only show that it could have caused some degree of the symptoms. *Smolen v.*
18 *Chater*, 80 F.3d 1273, 1282 (9th Cir. 1996).

19 If a claimant meets the first step, and there is no evidence of malingering, the ALJ
20 can only reject a claimant's testimony about the severity of his or her symptoms by
21 offering clear and convincing reasons that are supported by substantial evidence in the
22 record. *Lingenfelter*, 504 F.3d at 1036. In evaluating a claimant's symptom testimony,
23 the ALJ can consider many factors including: a claimant's reputation for truthfulness,
24 prior inconsistent statements concerning the symptoms, unexplained or inadequately
25 explained failure to seek treatment, and the claimant's daily activities. *Smolen*, 80 F.3d at
26 1284; *see also* 20 C.F.R. § 404.1529(c)(4) (Social Security must consider whether there
27 are conflicts between a claimant's statements and the rest of the evidence). In addition,
28 although the lack of medical evidence cannot form the sole basis for discounting pain

1 testimony, it is a factor that the ALJ can consider in evaluating the testimony. *Burch v.*
2 *Barnhart*, 400 F.3d 676 (9th Cir. 2005); *see also* 20 C.F.R. 404.1529(c); *Rollins v.*
3 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

4 Here, Plaintiff testified at the hearing that her bipolar disorder can cause her to feel
5 so low that she does not “get out of bed for days or a week, two weeks.” (A.R. 41). She
6 also testified that her anxiety causes her to experience migraines and shortness of breath.
7 (A.R. 40). In addition, Plaintiff stated that her bipolar disorder can cause her to get “very
8 agitated” and she “can fly off the handle very easy.” (A.R. 41). Although the ALJ’s
9 decision summarizes Plaintiff’s function report (A.R. 23), the decision does not discuss
10 any of Plaintiff’s statements made at the hearing.

11 The ALJ found that Plaintiff’s “medically determinable impairments could
12 reasonably be expected to cause the alleged symptoms; however, [Plaintiff’s] statements
13 concerning the intensity, persistence and limiting effects of these symptoms are not
14 entirely consistent with the medical evidence and other evidence in the record for the
15 reasons explained in this decision.” (A.R. 26). The ALJ concluded that “neither the
16 objective medical evidence” nor Plaintiff’s “own statements and activities supports a
17 conclusion that she is unable to perform any substantial gainful activity at the any
18 exertion level with additional non-exertional limitations as contained in the adopted
19 residual functional capacity.” (*Id.*). The Court does not find that these are clear and
20 convincing reasons for discounting Plaintiff’s symptom testimony.

21 First, although an ALJ may consider a lack of objective evidence in evaluating a
22 claimant’s testimony, a claimant’s testimony of disabling symptoms cannot be
23 discredited “merely because [it is] unsupported by objective evidence.” *See Lester v.*
24 *Chater*, 81 F.3d 821, 834 (9th Cir. 1995); *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir.
25 1991) (“[O]nce the claimant produces objective medical evidence of an underlying
26 impairment, [the ALJ] may not reject a claimant’s subjective complaints based solely on
27 a lack of objective medical evidence to fully corroborate the alleged severity of pain.”).
28

1 Plaintiff's testimony cannot be discounted on the sole basis that her alleged symptoms are
2 unsupported by objective evidence.

3 Second, as Plaintiff notes (Doc. 15 at 13), the ALJ did not explain which of
4 Plaintiff's statements and activities of daily living support the ALJ's conclusion that
5 Plaintiff is capable of performing substantial gainful activity. The ALJ's decision does
6 not adequately detail how Plaintiff's daily activities translate to the ability to sustain
7 competitive employment on a full-time basis. *See Vertigan v. Halter*, 260 F.3d 1044,
8 1050 (9th Cir. 2001) (explaining that "the mere fact that a plaintiff has carried on certain
9 daily activities, such as grocery shopping [and] driving a car, . . . does not in any way
10 detract from her credibility as to her overall disability. One does not need to be 'utterly
11 incapacitated' in order to be disabled."); *Garrison v. Colvin*, 759 F.3d 995, 1016 (9th Cir.
12 2014) (stating that the Ninth Circuit has "repeatedly warned that ALJs must be especially
13 cautious in concluding that daily activities are inconsistent with testimony about pain,
14 because impairments that would unquestionably preclude work and all the pressures of a
15 workplace environment will often be consistent with doing more than merely resting in
16 bed all day"). The Ninth Circuit has instructed that an "ALJ must state specifically which
17 symptom testimony is not credible and what facts in the record lead to that conclusion."
18 *Smolen*, 80 F.3d at 1284. The Court cannot affirm an ALJ's decision on a ground not
19 asserted by the ALJ. *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) ("A
20 reviewing court may not make independent findings based on the evidence before the
21 ALJ to conclude that the error was harmless."). The ALJ's decision requires the Court to
22 speculate as to the grounds for the ALJ's conclusion that Plaintiff's testimony conflicts
23 with the medical evidence. *See id.* at 495 (court "cannot substitute [the court's]
24 conclusions for the ALJ's, or speculate as to the grounds for the ALJ's conclusions.
25 Although the ALJ's analysis need not be extensive, the ALJ must provide some reasoning
26 in order for [the court] to meaningfully determine whether the ALJ's conclusions were
27 supported by substantial evidence.").

1 “The clear and convincing standard is the most demanding required
 2 in Social Security cases.” *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th
 3 Cir. 2002). “Sheer disbelief” of the severity of a claimant’s symptoms “is no substitute
 4 for substantial evidence.” *Benecke v. Barnhart*, 379 F.3d 587, 594 (9th Cir. 2004). The
 5 Court finds that the ALJ failed to provide specific, clear, and convincing reasons
 6 supported by substantial evidence for discounting Plaintiff’s symptom testimony
 7 regarding her impairments. This error is harmful and alone requires remand.

8 **C. The Case Will Be Remanded for an Award of Benefits**

9 “A district court may reverse the decision of the Commissioner of Social Security,
 10 with or without remanding the cause for a rehearing, but the proper course, except in rare
 11 circumstances, is to remand to the agency for additional investigation or explanation.”
 12 *Dominguez v. Colvin*, 808 F.3d 403, 407 (9th Cir. 2015) (citations and internal quotation
 13 marks omitted). A district court may remand directly for an award of benefits only when:
 14 “(1) the record has been fully developed and further administrative proceedings would
 15 serve no useful purpose; (2) the ALJ failed to provide legally sufficient reasons for
 16 rejecting evidence; and (3) if the improperly discredited evidence were credited as true,
 17 the ALJ would be required to find the claimant disabled on remand.” *Garrison*, 759 F.3d
 18 at 1020. Even if these requirements are met, the court retains “flexibility” to remand “on
 19 an open record for further proceedings when the record as a whole creates serious doubt
 20 as to whether the claimant is, in fact, disabled within the meaning of the Social Security
 21 Act.” *Dominguez*, 808 F.3d at 407-08.

22 After examining the record, the Court finds no outstanding issues of fact to be
 23 resolved through further proceedings. It is noted that a vocational expert did not testify at
 24 the hearing. However, “in the unusual case in which it is clear from the record that the
 25 claimant is unable to perform gainful employment in the national economy, even though
 26 the vocational expert did not address the precise work limitations established by the
 27 improperly discredited testimony, remand for an immediate award of benefits is
 28 appropriate.” *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004); *see also Harman*

1 v. *Appfel*, 211 F.3d 1172, 1178-79 (9th Cir. 2000) (explaining that remand for payment of
2 benefits was appropriate even where an ALJ might, in further proceedings, articulate a
3 proper reason for discrediting testimony).

4 It is clear from the record that if Plaintiff's symptom testimony was credited-as-
5 true, the ALJ would be required to find that Plaintiff is disabled. The Court does not find
6 any material evidence in the record that creates serious doubt that Plaintiff is in fact
7 disabled. Therefore, based on the record, the Court finds it inappropriate to remand the
8 case for further proceedings. See *Benecke*, 379 F.3d at 595 ("Allowing the
9 Commissioner to decide the issue again would create an unfair 'heads we win; tails, let's
10 play again' system of disability benefits adjudication."); *Moisa v. Barnhart*, 367 F.3d
11 882, 887 (9th Cir. 2004) ("The Commissioner, having lost this appeal, should not have
12 another opportunity to show that Moisa is not credible any more than Moisa, had he lost,
13 should have an opportunity for remand and further proceedings to establish his
14 credibility.") (citation omitted). The Court will remand the case for an immediate award
15 of benefits effective February 15, 2014 (the disability onset date).


16 **III. CONCLUSION**

17 Based on the foregoing,

18 **IT IS ORDERED** reversing the decision of the Commissioner of Social Security
19 and remanding this case to the Commissioner for an immediate award of benefits
20 effective February 15, 2014.

21 **IT IS FURTHER ORDERED** directing the Clerk of Court to enter judgment
22 accordingly.

23 Dated this 18th day of May, 2020.

24 
25 _____
26 Honorable Eileen S. Willett
27 United States Magistrate Judge
28